

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CHRISTOPHER BAUGH,)	
)	
Petitioner,)	
)	
-vs-)	Case No. CIV-17-1330-F
)	
KEN KLINGER, Warden,)	
)	
Respondent.)	

ORDER

United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation on February 27, 2018, recommending that petitioner’s petition for writ of habeas corpus be dismissed without prejudice. Magistrate Judge Purcell advised petitioner of his right to object to the Report and Recommendation by March 19, 2018 and further advised him that failure to timely object would waive appellate review of the recommended ruling.

To date, petitioner has not objected to Magistrate Judge Purcell’s Report and Recommendation and has not moved for an extension of time to file an objection.¹ With no objection filed within the time prescribed by Magistrate Judge Purcell, the court accepts, adopts and affirms the Report and Recommendation in its entirety.

Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts requires the court to issue or deny a certificate of appealability when


¹ The record reflects that the Report and Recommendation was returned to the court as undeliverable. *See*, doc. no. 19. However, under Rule 5.4(a) of the court’s Local Civil Rules, “[p]apers sent by the court will be deemed delivered if sent to the last known address given to the court.” Because the Report and Recommendation was mailed to petitioner’s last known address, the Report and Recommendation is deemed delivered.

it enters a final order adverse to the petitioner. A court may issue a certificate of appealability “only if the [petitioner] has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by demonstrating that reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented are adequate to deserve encouragement to proceed further. Slack v. McDaniel, 529 U.S. 473, 484 (2000). Where the court dismisses the petition based on procedural grounds, such as in the instant case, the petitioner must also show that jurists of reason would find it debatable whether the court was correct in its procedural ruling. *Id.*

Upon review, the court concludes that petitioner is not entitled to a certificate of appealability. The court therefore denies a certificate of appealability.

Accordingly, the Report and Recommendation of Magistrate Judge Gary M. Purcell issued on February 27, 2018 (doc. no. 18) is **ACCEPTED, ADOPTED** and **AFFIRMED**. Petitioner, Christopher Baugh’s petition for a writ of habeas petition is **DISMISSED WITHOUT PREJUDICE**. A certificate of appealability is **DENIED**.

IT IS SO ORDERED this 26th day of March, 2018.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE